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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Truth-in-Billing and Billing Format

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CC Docket 98-170

COMMENTS OF AT&T WIRELESS SERVICES, INC.

July 26, 1999

Douglas I. Brandon
Vice President – External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 223-9222

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T Wireless") hereby submits its comments in response to the Further Notice issued in the above-captioned proceeding, in which the Commission seeks comment on the potential application of the remaining truth-in-billing rules to commercial mobile radio service ("CMRS") providers.¹ AT&T Wireless urges the Commission not to apply these rules to CMRS providers and to forbear from applying the related truth-in-billing "principles" to CMRS providers as well.²

SUMMARY

In the Further Notice, the Commission adopted the following truth-in-billing principles:

- First, that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight new providers;
- Second, that bills contain full and non-misleading descriptions of charges that appear therein; and

¹ In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72 (rel. May 11, 1999) ("Further Notice").

² The remaining truth-in-billing rules are 47 C.F.R. §§ 64.2001(a)(2), 64.2001(b), and 64.2001(c). The three truth-in-billing principles are set forth in paragraph 5 of the Further Notice.

- Third, that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.³

The Commission found that these broad principles “represent fundamental statements of fair and reasonable practices” and should apply to all telecommunications carriers, both wireline and wireless.⁴ The Commission incorporated these principles into rules, together with certain more specific requirements.⁵ However, the Commission only applied two of the rules to wireless carriers⁶ and seeks comment in the Further Notice on whether the remaining rules should apply to CMRS carriers. The Commission also invited commenters to address the applicability of a section 10 forbearance analysis.⁷

AT&T Wireless strongly supports the Commission’s underlying goal of ensuring that consumers receive accurate and understandable bills with adequate information regarding the charges from their telecommunications carrier. AT&T Wireless believes that CMRS carriers are meeting this goal and that additional regulation is not needed to ensure that such carriers provide accurate and understandable billing. AT&T Wireless urges the Commission not to apply the remaining truth-in-billing rules to CMRS providers for several reasons.

³ Further Notice at ¶ 5.

⁴ Further Notice at ¶ 13.

⁵ 47 C.F.R. § 64.200.

⁶ 47 C.F.R. §§ 64.2001(a)(1) and (d) (requiring wireless carriers to clearly identify the name of the service provider associated with each charge and to display a toll-free number on the bill that customers can use to inquire or dispute any charge contained in the bill.) See also Further Notice at ¶ 17.

⁷ Further Notice at ¶ 68.

First, there is no evidence of problems, customer confusion, or complaints with respect to CMRS billing practices.⁸ Second, the Commission's main concern and the stated purpose behind the truth-in-billing requirements is to protect consumers from slamming and cramming. However, the Commission has already decided that wireless customers do not require protection from slamming⁹ and there is no evidence in the record of cramming problems for wireless customers. Third, the remaining truth-in-billing requirements are generally not applicable to the manner in which CMRS carriers bill for service. Finally, vigorous competition in the wireless market already ensures that no single CMRS carrier could engage in unreasonable or unjust billing practices. To the extent that consumers believe that their carrier is not providing them with adequate or sufficient billing information, they can always "vote with their feet" and change providers. The Commission should not impose unnecessary and unwarranted regulations upon CMRS providers.

I. THE COMMISSION SHOULD NOT APPLY THE REMAINING TRUTH-IN-BILLING RULES TO WIRELESS SERVICES

A. There Is No Evidence that Current CMRS Billing Practices Are "Unclear or Misleading" and Therefore There Is No Justification for the Added Regulations

The principal goal of the Telecommunications Act of 1996¹⁰ ("the Act") is to "provide for a pro-competitive deregulatory national policy framework."¹¹ Thus, the

⁸ See Further Notice at ¶ 16.

⁹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 at ¶ 85 (rel. December 23, 1998) ("Slamming Order").

¹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

Commission should not adopt additional regulation unless there is clear evidence that a need exists. Moreover, regulation should be adopted only as a last resort: “Congress has commanded that we look in the first instance to the market to determine what carriers provide their customers, and only when it is clearly demonstrated that the absence of regulation will harm consumers should we seek to intervene.”¹² In the case of CMRS customers, issues relating to unclear billing, slamming and cramming appear to be almost non-existent. Moreover, to the extent that such issues exist or arise, competitive pressures will deter any unfair or unreasonable billing practices by CMRS providers.

1. There Is No Evidence of CMRS Billing Problems in the Record

There is no need for the Commission to intervene on behalf of CMRS consumers to protect them from misleading billing practices. The Commission itself has observed that the record reflects a low volume of customer complaints in the CMRS context and does not indicate that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices.¹³ These findings were echoed in several of the Commissioners’ separate statements.¹⁴ Given the absence

¹¹ See H.R. Conf. Rep. No. 104-458, at 113 (1996).

¹² Further Notice, Separate Statement of Commissioner Michael K. Powell, Concurring at 77 (“Powell Statement”). Commissioner Powell recognized that Congress clearly directed the Commission to rely on market competition, rather than regulation. *Id.* at n.269 (citing 47 U.S.C. § 160 (requiring forbearance) and 47 U.S.C. § 161 (requiring the Commission to review “all regulations” every two years to “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.”)).

¹³ See Further Notice at ¶ 16.

¹⁴ See Further Notice, Separate Statement of Commissioner Susan Ness at 72 (noting that “the billing practices of wireless carriers have generated only an incredibly small number of complaints”) (“Ness Statement”); Powell Statement at 75 (stating that “the Order’s assertions that government intervention is always necessary to protect consumers ignore the clear evidence on the record indicating that the problems

of complaints, the Commission should not establish “requirements to cure a non-existent problem.”¹⁵ Even though the Commission notes that there is growing evidence that some consumers are substituting wireless phones for landline phones, this should not affect the Commission’s decision. In AT&T Wireless’s experience there is only anecdotal evidence of customers who completely abandon their landline phone for a wireless phone.

Furthermore, there is no reason to believe that if and when consumers start using wireless phones in lieu of their landline phones that CMRS billing practices will become less consumer friendly or that more complaints will arise. In the remote chance that consumers faced such practices from a wireless carrier, they could change wireless carriers or return to the landline telephone company. The Commission should not adopt rules in anticipation of a change in the competitive landscape that has not yet occurred, to prevent problems it has no evidence will ever occur.

2. Slamming and Cramming Have Not Been Problems for Wireless Customers

The Commission has repeatedly stated that the thrust behind the truth-in-billing rules is the increase in the number of slamming and cramming complaints. The original Notice in this proceeding solicited comment on whether the proposed truth-in-billing rules might help to address problems associated with slamming and cramming.¹⁶ The Further Notice stated that “the truth-in-billing principles and guidelines adopted herein

of slamming, cramming and consumer confusion may not be significant in certain telecommunications markets, such as wireless...”).

¹⁵ See Ness Statement at 71.

¹⁶ See In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, Notice of Proposed Rulemaking, 13 FCC Rcd 18176 (1998).

are justified as slamming verification requirements,”¹⁷ and that the “the truth-in billing guidelines we adopt in this Order are intended to function as a critical component of the Commission’s verification procedures.”¹⁸ Furthermore, the purpose and scope of the truth-in-billing requirements is to “reduce slamming and other telecommunications fraud.”¹⁹ However, the record has not demonstrated that this concern exists with respect to CMRS consumers.

The Commission has already concluded that slamming does not occur in the current CMRS market.²⁰ Because of the lack of an underlying slamming problem, the Commission specifically created an exception to its anti-slamming verification rules for CMRS providers.²¹ If CMRS providers are exempt from the underlying verification procedures, there is no justification for subjecting CMRS providers to guidelines that “are intended to function as a critical component of the Commission’s verification procedures.”²²

¹⁷ Further Notice at ¶ 21.

¹⁸ Further Notice ¶ 23.

¹⁹ 47 C.F.R. § 64.2000(a).

²⁰ Slamming Order at ¶ 85. As an initial matter, there is no slamming of “wireless long distance” because CMRS providers are not subject to equal access requirements. 47 U.S.C. § 332 (c) (8). As a result, CMRS providers are not required to (and often do not) offer their customers a choice of long distance providers. Moreover it appears that when carriers do offer a choice, they require the subscriber to initiate the change. See id. Similarly, it is virtually impossible to change a customer’s “wireless local service” without his or her knowledge or consent because in most cases the consumer must purchase a different wireless phone or at the very least manually reprogram his or her wireless phone to change providers.

²¹ Slamming Order at ¶ 85.

²² Further Notice at ¶ 23.

3. AT&T Wireless's Bills Are Accurate and Complete

AT&T Wireless provides its customers with accurate, complete billing information in an easy to read format, in a level of detail they choose. All bills clearly indicate that AT&T Wireless is the provider of the service and include a contact address and two contact telephone numbers for customers to use to make billing inquiries: a "611" number that customers can dial free from their wireless phones and an 800/888 number that can be dialed toll free from a wireline phone. The different types of services and features the customer is receiving are all clearly delineated with descriptive names, e.g. "Home Airtime Charges," "Roaming Charges," and "Voice Mail." This allows customers to easily review their bills and verify that they are receiving the correct services. In addition, for those customers who elect detailed billing, AT&T Wireless provides a list of all calls made or received by their wireless phone. The list includes information on date, time, whether the call is incoming or outgoing, the general location from which the call was made or received (city and state), and the duration of the call. It is clearly in AT&T Wireless's interest to provide the customer with as much information as possible on their wireless phone bill because it reduces customer inquiries and billing disputes.

B. Most of the Remaining Truth-In-Billing Rules Are Generally Not Applicable to the Manner in which CMRS Providers Offer and Bill for Their Services

The rule mandating that charges for two or more carriers appearing on the same bill must be separated by service provider is generally not applicable to CMRS

providers.²³ There are only very limited circumstances in which AT&T Wireless would bill for another service provider. For example, AT&T Wireless's National Business Accounts will provide a "consolidated" bill for large business customers who obtain a small number of wireless service lines from another CMRS provider in those areas of the country where AT&T Wireless does not provide wireless service. This service is provided as a courtesy to our large business customers and does not apply to the individual wireless phone users. The fact that there are limited circumstances in which a CMRS carrier may bill for another service provider should not form the basis for applying this truth-in-billing rule to CMRS providers.

Furthermore, requiring a CMRS carrier to provide clear and conspicuous notification of a change in service provider²⁴ simply is unnecessary. As explained in detail above, it is virtually impossible for there to be a change in a wireless customer's "local" or "long distance" provider without the customer's knowledge.²⁵ There are a number of steps that a customer must go through to make the change and, unlike its wireline counterparts, wireless carriers will only change a wireless customer's service provider at a subscriber's request – not at the request of a carrier.²⁶

²³ 47 C.F.R. § 64.2001(a)(2).

²⁴ Id.

²⁵ See supra note 21.

²⁶ For example, if an AirTouch customer wanted to change his or her "local" wireless service to AT&T Wireless that customer would have to: (1) contact AirTouch and request that their AirTouch service be terminated; (2) contact AT&T Wireless sign up for service; and (3) get a new phone or have the existing one re-programmed by AT&T Wireless (depending on the model). The customer would then get a "Welcome Packet" in the mail from AT&T Wireless that would be followed soon thereafter by an AT&T Wireless bill for wireless service that would prominently display AT&T's name.

C. Competition and the Commission's Existing Enforcement Authority Under Section 201 Will Ensure That Customers Bills Are Just, Reasonable and Not Unnecessarily Discriminatory

Vigorous competition ensures that no single CMRS carrier could impose billing practices that are unjust or unreasonable. In a competitive market, such as the current CMRS market, the risk to a provider of engaging in fraudulent practices "is that consumers will soon discover these practices and cease to generate revenues for those providers."²⁷ Moreover, "competition empowers consumers to leave their provider and find another if their current provider does not treat them fairly."²⁸

There is in fact vigorous competition in the wireless services market. In its most recent report to Congress, the Commission found that in the mobile telephony sector, broadband PCS and digital SMR operators have continued to aggressively deploy their networks and that these efforts have resulted in improved coverage and increased competition.²⁹ There are at least five mobile telephone providers in each of the 35 largest Basic Trading Areas ("BTAs") and at least three in 97 of the 100 largest BTAs.³⁰ Currently, there are three or more mobile telephone operators providing service in over 230 BTAs, containing over 230 million people.³¹ The robust competition in the CMRS market allows subscribers that are dissatisfied with any part of their experience with a

²⁷ Powell Statement at 74.

²⁸ Id.

²⁹ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fourth Report, FCC 99-136 at 5 (rel. June 24, 1999).

³⁰ Id. at 6.

³¹ Id. at 63.

CMRS provider, including the carrier's billing practices, to switch to another carrier. Therefore, it is in every CMRS provider's interest to provide customers with clear and accurate billing information. To the extent that the competitive market fails to bring this pressure to bear, the Commission already has the jurisdiction to review a carrier's provision of misleading or deceptive billing information pursuant to section 201(b) of the Act, either on its own motion or in response to a complaint filed pursuant to section 208.

II. THE COMMISSION SHOULD FORBEAR FROM APPLYING THE CORRESPONDING TRUTH-IN-BILLING PRINCIPLES TO CMRS CARRIERS

The Commission's decision to apply all of the principles but only some of the rules to CMRS carriers has created an apparent inconsistency in CMRS carriers' obligations because the principles and the rules are in many respects essentially identical.³² For example, as it stands today, wireless carriers are required to comply with the principle that bills must contain full and non-misleading descriptions of charges that appear therein.³³ Yet, wireless carriers are exempt from the corresponding rule³⁴ that "charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered."³⁵ In order to reconcile this apparent inconsistency, and give meaning to the Commission's decision not

³² Further Notice, Dissenting Statement of Commissioner Harold Furchtgott-Roth at 82-85.

³³ Further Notice at ¶ 5.

³⁴ 47 C.F.R. § 64.2000(b) (exempting CMRS providers from rules 64.2001(a)(2), 64.2001(b) and 64.2001(c)).

³⁵ 47 C.F.R. § 64.2001(b).

to apply these rules to CMRS providers, the Commission must forbear from applying the principles that correspond to the rules.³⁶

Section 10(a) of the Act requires the Commission to forbear from applying any provision of the Act if it determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. This standard is repeated in section 332(c)(1)(A) of the Act, which grants the Commission the authority to forbear from imposing certain common carrier obligations on CMRS providers.

Pursuant to this section, AT&T Wireless requests that the Commission forbear from applying the principles that correspond to the truth-in-billing rules discussed above. As explained in detail above, the application of the principles to CMRS providers is not necessary to ensure just or reasonable billing practices or to protect customers. Moreover, forbearance serves the public interest by reducing CMRS providers' regulatory compliance costs, which otherwise ultimately would be passed through to subscribers. Finally, and perhaps most importantly, continuing to apply the principles to CMRS providers would make the Commission's decision not to apply the rules to CMRS providers meaningless.

³⁶ It appears that Commission staff may have recognized this inconsistency and attempted to correct it in the May 24, 1999 Errata that was later essentially rescinded by a May 28, 1999 Erratum.

CONCLUSION

For the foregoing reasons, the Commission should not apply the remaining truth-in-billing requirements to CMRS providers and should forbear from applying the principles to them as well. While AT&T Wireless supports the Commission's underlying goal of providing consumers with clear and accurate billing, the principles and the remaining rules are not necessary to protect CMRS consumers or ensure that CMRS billing practices are just and reasonable. Requiring CMRS carriers to comply with unnecessary regulation will only result in increased costs to carriers and ultimately consumers. As Commissioner Ness correctly noted in her separate statement, "any rules – even flexible ones – impose some costs (which are paid by consumers)."³⁷ Promulgating rules that are not needed will only harm consumers in the end, rather than protecting them.

Respectfully submitted,

Douglas I. Brandon /mm

Douglas I. Brandon
Vice President – External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 223-9222

July 26, 1999

³⁷ Ness Statement at 71.

CERTIFICATE OF SERVICE

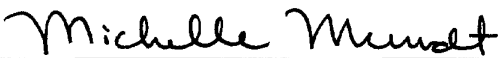
I, Michelle Mundt, hereby certify that on this 26th day of July 1999, I caused copies of the following "Comments of AT&T Wireless" to be sent to the following via hand delivery:

Lawrence E. Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C450
Washington, D.C. 20554

David Konuch
Common Carrier Bureau's Enforcement
Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Glenn T. Reynolds
Acting Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-A847
Washington, D.C. 20554

ITS, Inc.
1231 20th Street, NW
Washington, D.C. 20036



Michelle Mundt